

**STATE OF MICHIGAN**  
**DEPARTMENT OF LABOR & ECONOMIC GROWTH**  
**OFFICE OF FINANCIAL AND INSURANCE SERVICES**  
**Before the Commissioner of Financial and Insurance Services**

In the matter of

XXXXX

Petitioner

File No. 85737-001

v

Aetna Health and Life Insurance Company  
Respondent

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Issued and entered  
this 26th day of November 2007  
by Ken Ross  
Acting Commissioner

**ORDER**

**I**

**PROCEDURAL BACKGROUND**

On October 12, 2007, XXXXX, authorized representative for XXXXX (Petitioner) filed a request for external review with the Commissioner of Financial and Insurance Services under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq.* The Commissioner reviewed the request and accepted it for external review on October 18, 2007.

The Commissioner notified Aetna Health and Life Insurance Company of the external review and requested the information used in making its adverse determination.

The case involves medical issues so the Commissioner assigned it to an independent review organization (IRO) which provided its recommendation to the Commissioner on November 1, 2007.

**II**

**FACTUAL BACKGROUND**

The Petitioner has group health care coverage with Aetna. Through her physician, the Petitioner requested approval for a bone anchored hearing aid (BAHA). A BAHA is a type of bone conduction hearing aid consisting of a titanium screw surgically implanted in the temporal bone behind the ear. An external hearing aid is attached and sound is conducted from the external hearing aid to the implanted screw and then, through bone conduction, to the cochlea.

Aetna denied coverage asserting that the device is experimental or investigational and that hearing aids are specifically excluded in the Petitioner's policy. The Petitioner appealed but Aetna maintained its denial and issued a final adverse determination dated August 2, 2007.

### **III ISSUE**

Was Aetna's denial of the BAHA correct under the terms of the Petitioner's coverage?

### **IV ANALYSIS**

#### **Petitioner's Argument**

The Petitioner was diagnosed with a non-cancerous brain tumor in late 2006. The tumor had attached itself to her vestibular nerve in her right ear. Once the tumor was identified a surgery to remove the tumor was arranged. The Petitioner was advised that due to the location of the tumor, removal would cause those nerves to be severed and she would become 100% deaf in that ear. The BAHA device was prescribed by the Petitioner's surgeon to help with the hearing loss and resulting coordination and balance.

The Petitioner believes that Aetna should approve coverage for the device because it is medically necessary since the surgery to remove the tumor actually caused the hearing loss.

#### **Respondent's Argument**

In its final adverse determination, Aetna says it was correct in denying authorization and payment for the requested BAHA system because, "it is specifically excluded by the Petitioner's plan." Aetna says its Clinical Policy Bulletin entitled "Bone-Anchored Hearing Device" states that

“Most Aetna medical plans exclude coverage of hearing aides. Bone anchored hearing aids and temporal bone stimulators are not covered in plans that exclude coverage of hearing aids.” Aetna further argues that Covered Medical Expense in the Petitioner’s policy states:

Not included in this plan are such things as: eye glasses, hearing aids, vision aids, communication aids and orthopedic shoes, foot orthotics or other devices to support the feet.

Aetna did not indicate in its final adverse determination, as it did in the Petitioner’s appeals, any reference to medically necessary or experimental/investigational services.

#### Commissioner’s Review

The Commissioner has carefully reviewed the arguments of both parties as well as the documentation and benefit plan booklet. The booklet states that hearing aids are excluded and coverage is not provided for, or in connection with services or supplies that are determined to be experimental or investigational.

To resolve this case, the Commissioner asked for the opinion of an IRO since it involves clinical review criteria. The IRO reviewer is certified by the American Board of Otolaryngology, has a master’s degree in public health, and is in the active clinical practice of otolaryngology.

The IRO reviewer’s report included the following analysis:

The BAHA device consists of a titanium screw/mounting post that is surgically implanted in the skull behind the ear with a sound processor to amplify, process and transmit sound to the mounting post and effect bone conduction hearing. This is the essence of a bone-conduction hearing aid. While showing promise and demonstrated safety, there is yet insufficient evidence to demonstrate the efficacy of the BAHA for severe sensorineural hearing loss compared to the proven efficacy of conventional treatments.

The reviewer concluded that a BAHA device is a hearing aid and remains experimental/investigational for treatment of the Petitioner’s condition.

The Commissioner is not required in all instances to accept the IRO’s determination. However, the Commissioner gives deference to the IRO determination since it is based on extensive expertise and professional judgment. The Commissioner, discerning no reason to reject

the determination in this case, accepts the IRO reviewer's determination that a BAHA is a hearing aid and is, therefore not a covered medical expense. Further, the BAHA device is experimental/investigational and therefore excluded from coverage for that reason as well.

**V  
ORDER**

The Commissioner upholds Aetna Health and Life Insurance Company's adverse determination of August 2, 2007. Aetna is not required to provide coverage for a bone anchored hearing aid.

This is a final decision of an administrative agency. Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later than sixty days from the date of this Order in the Circuit Court for the county where the covered person resides or in the Circuit Court of Ingham

County. A copy of the petition for judicial review should be sent to the Commissioner of the Office of Financial and Insurance Services, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.